IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

FIRST APPEAL NO. 213 OF 2006

The New India Assurance Co. Ltd.
With its Division Office at
Santa Palagia Building, IInd Floor,
Above New Bank of India,
Opp. Khalap Mansion,
Vasco-Da-Gama, Goa. .... Appellant

Versus

Shri Joao F.C. Fernandes
major in age, businessman,
resident of 1st Aravalem,
Cortalim, Goa. .... Respondent

Shri E. Afonso, Advocate for the Appellant.

Shri S.S. Kakodkar, Advocate for the Respondent.

CORAM : **P. V. KAKADE, J.**

DATE **: 3rd October, 2006**

ORAL JUDGMENT :

Rule. Rule made returnable by consent.

2. Heard the learned Counsel for both the parties. Perused the record.

3. The appeal is preferred by the appellant, Assurance Company, against the judgment and order passed by the Civil Judge, Senior Division, Vasco da Gama, decreeing the respondent's/plaintiff's suit to recover an amount of Rs. 2,75,000/- with interest which was decreed at the rate of 12% from 23/03/1992 till final payment.

4. The respondent/plaintiff came with the case that he was the owner of a fishing trawler F.T. IVI named “Andreza” bearing registration No. MAR-A-61-DF duly registered with Captain of Ports, Panaji, Goa. The said trawler was insured with the appellant/defendant for the period from 21/01/1990 to 19/01/1991 for the amount of Rs. 2,75,000/- under the Marine Hull Policy. On 06/05/1990, the vessel developed some problem due to parting of a wooden plank of the engine room and inspite of best efforts the vessel sank in the Arabian Sea near Tamran Island. Plaintiff lodged a report with the police and subsequently, lodged claim with the defendant. The defendant on 23/03/1992 informed the plaintiff about the rejection of his claim for insurance amount on the ground that vessel was unseaworthy and the vessel was not adequately manned at the time of accident. Hence, the suit.

5. The appellant-defendant, inter alia, denied the allegations on various grounds including that plaintiff did not make any efforts to save the vessel, by bringing the vessel close to the shore and there was sufficient time for the plaintiff to bring the vessel to the shore. It was also submitted that the vessel was unseaworthy and was not adequately manned at the time of accident and due to this reason, it sank. On such and other grounds, the suit was sought to be decreed.

6. The learned trial Judge raised various issues on the basis of pleadings and available evidence on record and came to the conclusion that the plaintiff had proved his claim against the defendant and decree came to be passed for an amount of Rs. 2,75,000/- with interest at the rate of 12% from 23/03/1992 till final payment.

Hence the present appeal.

7. At the outset, it may be noted that the learned Counsel for the appellant, did not challenge the merits of the dispute, nor assailed the findings recorded by the learned trial Judge. However, he has limited the dispute only with regard to the rate of interest awarded. It was submitted on behalf of the appellant that rate of interest at 12% per annum was

excessive and has no sanction of law. According to him, stipulating provisions of Section 34 of the Civil Procedure Code clear the outer limit for sanction of the interest amount at the rate of 6% per annum. On the other hand, the learned Counsel for the respondent urged that even under Section 34 of the Civil Procedure Code, the interest amount could exceed 6% limit as it was commercial transaction and, moreover, it was in the discretion of the Court to grant interest at such rate, in absence of any agreement between the parties in the regard. In support of his submission, the learned Counsel for the respondent put reliance on the Apex Court ruling in the case of ***Aditya Mass Communications (P) Ltd.*** **Versus** ***A.P. SRTC,*** **(2003) 11 SCC 17,** wherein it was observed that a party wrongly denied the use of its own money has to be compensated appropriately and, therefore, the High Court was not justifying in reducing the interest on the amount from 12% to 9% per annum, in view of the facts and circumstances involved in the case. It was laid down that the quantum of interest a Court may allow in a given case is governed by the facts of the case and not by any precedent law unless, of course, limited by a statute. Therefore, on the basis of this observation, the Apex Court restored the rate of interest at 12% per annum.

8. Provision of Section 34 of the Civil Procedure Code, no doubt,

limits the grant of interest up to the rate of 6% per annum. However, the Proviso thereof shows that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. On the basis of the Proviso of Section 34 of the Civil Procedure Code, the learned Counsel for respondent submitted that during the relevant period, the rate of interest was definitely more than 12% per annum fixed by nationalised banks or commercial establishments, and, therefore, the discretion used by the trial Court appears to be just, legal and proper. The learned Counsel for the appellant urged that the insurance policy executed between the parties could not be said to be the commercial transaction within the meaning of definition of the said provision. Now, the term “commercial transaction” is defined by Explanation (ii) to Section 34 of the Civil Procedure Code which reads that;

> 'a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.'

Therefore, the plain reading of the said provision itself, would show that it was commercial transaction between the parties and, therefore, limit of

interest at the rate of 6% per annum could not be made applicable to the impugned transaction.

9. Taking into account the facts and circumstances, therefore, it appears that the trial Court has used its discretion judiciously while decreeing the interest at the rate of 12% per annum for the relevant period and, therefore, it would brook no interference.

10. The learned Counsel for the appellant also sought to raise some objections to some orders passed by the execution Court, when the decree was sought to be executed. However, it is needless to mention that this is a substantive appeal against the judgment and decree passed by the trial Court and this Court cannot look into any orders passed by the execution Court in the course of execution proceedings, for which the appellant will have independent remedy.

11. With these observations, the rule is discharged. The appeal is hereby dismissed with no orders as to costs. The appellant shall deposit/pay decreetal amount within a period of four weeks from the date of this order. At this stage, the learned Counsel for the appellant has

submitted that he has paid part of the decreetal amount. The remaining amount to be paid within four weeks.

P.V. KAKADE, J.

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